IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7993 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALVANTBHAI DANABHAI LUNI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR SK PATEL, Learned AGP for Respondent Nos.1,2 and 3

MS PJ DAVAWALA,Learned Standing Sr. Counsel for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/09/2000

ORAL JUDGEMENT

1. The petitioner has filed the present petition under Articles 14, 19, 21 and 22 of the Constitution of

India challenging the order of his detention dated 3.7.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for respondent nos. 1,2 and 3. Ms. P.J.Dawavala appeared for respondent no.4 and filed an counter affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi which may be taken on record. I have heard learned advocates for the parties and have perused the papers.

3. It has been mainly contended here that the documents supplied by the respondent to the petitioner were not fully legible and, therefore, the petitioner could not make effective representation against his detention. Therefore, the valuable right of the petitioner of making effective representation has been taken away and consequentially there is a clear violation of principles of natural justice. Therefore, further detention of petitioner cannot be treated to be legal. The petitioner, therefore, prayed that the detention order dated 3.7.2000 recorded by the second respondent be quashed and set aside.

4. In support of the said contention, learned advocate for the petitioner has relied upon page-219 which is an entry of Sale Register of one Uday Traders, Navagadh. There, some names of consumers have been mentioned. The lwearned advocate for the petitioner has relied upon the entry at Sr. Nos. 431, 432 and 433. In these entries there are three names. Out of them it can be said that so far the names at Entry Nos. 432 and 433 are concerned, these names are not legible without making gues work. It is not possible to make out as to who are the consumers mentioned at Sr. No. 432 and 433. It therefore becomes very clear that this document is not clearly legible. In other words, the petitioner has not been supplied with copy of legible documents. In my view, when legible copy of document has not been supplied, it would amount to non-supply of document relied upon by the detaining authority for the purpose of passing detention order against the petitioner. It is not in dispute that this document was relied upon and considered by the detaining authority for the purpose of passing detention order and by State Government for approving the said detention order of the petitioner. This would mean that the petitioner has not been supplied

with legible copy of documents relied upon by the detaining authority for the purpose of detaining the petitioner.

5. In this case it would be worthwhile to a refer to decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgement reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

6. It would therefore be clear that if a document is relied upon and considered by the detaining authority for the purpose of detaining the petitioner and if the copy of that document supplied to the petitioner is not legible then valuable right of the petitioner of making effective representation has been taken away. This would be in violation of the principles of natural justice. It would also hurt the statutory right of the petitioner to make effective representation and ultimately, it would hurt the constitutional right under Article 22(5) of the Constitution of India. In that view of the matter, the aforesaid order of detention suffers from aforesaid infirmity and consequently, it is required to be quashed and set aside.

7. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by

the District Magistrate, Rajkot against the petitioner on 3.7.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs. Direct service is permitted.

(D.P.Buch,J)

(vipul)